

**Effective 5/10/2016**

**34A-5-106 Discriminatory or prohibited employment practices -- Permitted practices.**

(1) It is a discriminatory or prohibited employment practice to take an action described in Subsections (1)(a) through (g).

(a)

(i) An employer may not refuse to hire, promote, discharge, demote, or terminate a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a person otherwise qualified, because of:

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) age, if the individual is 40 years of age or older;
- (F) religion;
- (G) national origin;
- (H) disability;
- (I) sexual orientation; or
- (J) gender identity.

(ii) A person may not be considered "otherwise qualified," unless that person possesses the following required by an employer for any particular job, job classification, or position:

- (A) education;
- (B) training;
- (C) ability, with or without reasonable accommodation;
- (D) moral character;
- (E) integrity;
- (F) disposition to work;
- (G) adherence to reasonable rules and regulations; and
- (H) other job related qualifications required by an employer.

(iii)

(A) As used in this chapter, "to discriminate in matters of compensation" means the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.

(B) Notwithstanding Subsection (1)(a)(iii)(A):

- (I) nothing in this chapter prevents an increase in pay as a result of longevity with the employer, if the salary increase is uniformly applied and available to all employees on a substantially proportional basis; and
- (II) nothing in this section prohibits an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments.

(b) An employment agency may not:

(i) refuse to list and properly classify for employment, or refuse to refer an individual for employment, in a known available job for which the individual is otherwise qualified, because of:

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;

- (F) national origin;
- (G) age, if the individual is 40 years of age or older;
- (H) disability;
- (I) sexual orientation; or
- (J) gender identity; or
- (ii) comply with a request from an employer for referral of an applicant for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of:
  - (A) race;
  - (B) color;
  - (C) sex;
  - (D) pregnancy, childbirth, or pregnancy-related conditions;
  - (E) religion;
  - (F) national origin;
  - (G) age, if the individual is 40 years of age or older;
  - (H) disability;
  - (I) sexual orientation; or
  - (J) gender identity.
- (c)
  - (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):
    - (A) exclude an individual otherwise qualified from full membership rights in the labor organization;
    - (B) expel the individual from membership in the labor organization; or
    - (C) otherwise discriminate against or harass a member of the labor organization in full employment of work opportunity, or representation.
  - (ii) A labor organization may not take an action listed in this Subsection (1)(c) because of:
    - (A) race;
    - (B) sex;
    - (C) pregnancy, childbirth, or pregnancy-related conditions;
    - (D) religion;
    - (E) national origin;
    - (F) age, if the individual is 40 years of age or older;
    - (G) disability;
    - (H) sexual orientation; or
    - (I) gender identity.
- (d)
  - (i) Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for a security reason, an employer, employment agency, or labor organization may not do the following if the statement, advertisement, publication, form, or inquiry violates Subsection (1)(d)(ii):
    - (A) print, circulate, or cause to be printed or circulated a statement, advertisement, or publication;
    - (B) use a form of application for employment or membership; or
    - (C) make any inquiry in connection with prospective employment or membership.
  - (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or inquiry that directly expresses a limitation, specification, or discrimination as to:
    - (A) race;
    - (B) color;

- (C) religion;
  - (D) sex;
  - (E) pregnancy, childbirth, or pregnancy-related conditions;
  - (F) national origin;
  - (G) age, if the individual is 40 years of age or older;
  - (H) disability;
  - (I) sexual orientation; or
  - (J) gender identity.
- (e) A person, whether or not an employer, an employment agency, a labor organization, or an employee or member of an employer, employment agency, or labor organization, may not:
- (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a discriminatory or prohibited employment practice;
  - (ii) obstruct or prevent a person from complying with this chapter, or any order issued under this chapter; or
  - (iii) attempt, either directly or indirectly, to commit an act prohibited in this section.
- (f)
- (i) An employer, labor organization, joint apprenticeship committee, or vocational school providing, coordinating, or controlling an apprenticeship program or providing, coordinating, or controlling an on-the-job-training program, instruction, training, or retraining program may not:
    - (A) deny to, or withhold from, any qualified person the right to be admitted to or participate in an apprenticeship training program, on-the-job-training program, or other occupational instruction, training, or retraining program because of:
      - (I) race;
      - (II) color;
      - (III) sex;
      - (IV) pregnancy, childbirth, or pregnancy-related conditions;
      - (V) religion;
      - (VI) national origin;
      - (VII) age, if the individual is 40 years of age or older;
      - (VIII) disability;
      - (IX) sexual orientation; or
      - (X) gender identity;
    - (B) discriminate against or harass a qualified person in that person's pursuit of a program described in Subsection (1)(f)(i)(A) because of:
      - (I) race;
      - (II) color;
      - (III) sex;
      - (IV) pregnancy, childbirth, or pregnancy-related conditions;
      - (V) religion;
      - (VI) national origin;
      - (VII) age, if the individual is 40 years of age or older;
      - (VIII) disability;
      - (IX) sexual orientation; or
      - (X) gender identity;
    - (C) discriminate against a qualified person in the terms, conditions, or privileges of a program described in Subsection (1)(f)(i)(A), because of:
      - (I) race;

- (II) color;
  - (III) sex;
  - (IV) pregnancy, childbirth, or pregnancy-related conditions;
  - (V) religion;
  - (VI) national origin;
  - (VII) age, if the individual is 40 years of age or older;
  - (VIII) disability;
  - (IX) sexual orientation; or
  - (X) gender identity; or
- (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or published, a notice or advertisement relating to employment by the employer, or membership in or a classification or referral for employment by a labor organization, or relating to a classification or referral for employment by an employment agency, indicating a preference, limitation, specification, or discrimination based on:
- (I) race;
  - (II) color;
  - (III) sex;
  - (IV) pregnancy, childbirth, or pregnancy-related conditions;
  - (V) religion;
  - (VI) national origin;
  - (VII) age, if the individual is 40 years of age or older;
  - (VIII) disability;
  - (IX) sexual orientation; or
  - (X) gender identity.
- (ii) Notwithstanding Subsection (1)(f)(i)(D), if the following is a bona fide occupational qualification for employment, a notice or advertisement described in Subsection (1)(f)(i)(D) may indicate a preference, limitation, specification, or discrimination based on:
- (A) race;
  - (B) color;
  - (C) religion;
  - (D) sex;
  - (E) pregnancy, childbirth, or pregnancy-related conditions;
  - (F) age;
  - (G) national origin;
  - (H) disability;
  - (I) sexual orientation; or
  - (J) gender identity.
- (g) Subject to Subsection (7), an employer may not:
- (i) refuse to provide reasonable accommodations for an employee related to pregnancy, childbirth, breastfeeding, or related conditions:
    - (A) if the employee requests a reasonable accommodation; and
    - (B) unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer;
  - (ii) require an employee to terminate employment if another reasonable accommodation can be provided for the employee's pregnancy, childbirth, breastfeeding, or related conditions unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer; or

- (iii) deny employment opportunities to an employee, if the denial is based on the need of the employer to make reasonable accommodations related to the pregnancy, childbirth, breastfeeding, or related conditions of an employee unless the employer demonstrates that the accommodation would create an undue hardship on the operations of the employer.
- (2) Subsections (1)(a) through (1)(g) may not be construed to prevent:
  - (a) the termination of employment of an individual who, with or without reasonable accommodation, is physically, mentally, or emotionally unable to perform the duties required by that individual's employment;
  - (b) the variance of insurance premiums or coverage on account of age; or
  - (c) a restriction on the activities of a person licensed in accordance with Title 32B, Alcoholic Beverage Control Act, with respect to an individual who is under 21 years of age.
- (3)
  - (a) It is not a discriminatory or prohibited employment practice:
    - (i) for an employer to hire and employ an employee, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship or other training or retraining program to admit or employ an individual in the program on the basis of religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, disability, sexual orientation, or gender identity in those certain instances when religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin, disability, sexual orientation, or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;
    - (ii) for a school, college, university, or other educational institution to hire and employ an employee of a particular religion if:
      - (A) the school, college, university, or other educational institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religious corporation, association, or society; or
      - (B) the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion;
    - (iii) for an employer to give preference in employment to:
      - (A) the employer's:
        - (I) spouse;
        - (II) child; or
        - (III) son-in-law or daughter-in-law;
      - (B) a person for whom the employer is or would be liable to furnish financial support if the person were unemployed;
      - (C) a person to whom the employer during the preceding six months furnishes more than one-half of total financial support regardless of whether or not the employer was or is legally obligated to furnish support; or
      - (D) a person whose education or training is substantially financed by the employer for a period of two years or more.
  - (b) Nothing in this chapter applies to a business or enterprise on or near an Indian reservation with respect to a publicly announced employment practice of the business or enterprise under which preferential treatment is given to an individual because that individual is a native American Indian living on or near an Indian reservation.

- (c) Nothing in this chapter may be interpreted to require an employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to an individual or to a group because of the race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity of the individual or group on account of an imbalance that may exist with respect to the total number or percentage of persons of a race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity employed by an employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by a labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, age, national origin, disability, sexual orientation, or gender identity in any community or county or in the available work force in any community or county.
- (4) It is not a discriminatory or prohibited practice with respect to age to observe the terms of a bona fide seniority system or any bona fide employment benefit plan such as a retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire an individual.
- (5) Notwithstanding Subsection (4), or another statute to the contrary, a person may not be subject to involuntary termination or retirement from employment on the basis of age alone, if the individual is 40 years of age or older, except:
  - (a) under Subsection (6); and
  - (b) when age is a bona fide occupational qualification.
- (6) Nothing in this section prohibits compulsory retirement of an employee who has attained at least 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if:
  - (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit from the employee's employer's pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans; and
  - (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.
- (7)
  - (a) For purposes of Subsection (1)(g), an employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation.
  - (b) A certification under Subsection (7)(a) shall include:
    - (i) the date the reasonable accommodation becomes medically advisable;
    - (ii) the probable duration of the reasonable accommodation; and
    - (iii) an explanatory statement as to the medical advisability of the reasonable accommodation.
  - (c) Notwithstanding Subsections (1)(g) and (7)(a), an employer may not require an employee to obtain a certification from the employee's health care provider for more frequent restroom, food, or water breaks.
  - (d) An employer is not required under Subsection (1)(g) or this Subsection (7) to permit an employee to have the employee's child at the workplace for purposes of accommodating pregnancy, childbirth, breastfeeding, or related conditions.
  - (e) An employer shall include in an employee handbook, or post in a conspicuous place in the employer's place of business, written notice concerning an employee's rights to reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions.

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